



Supreme Court of California
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NEWS RELEASE

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FOR IMMEDIATE RELEASE

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Summary of Cases Accepted and Related Actions During Week of December 19, 2016

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The statement of the issue or issues in each case set out below does not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#16-445 *T-Mobile West LLC v. City and County of San Francisco*, S238001.

(A144252; 3 Cal.App.5th 334, mod. 3 Cal.App.5th 999c; San Francisco County Superior Court; CGC11510703.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case presents the following issues: (1) Is a local ordinance regulating wireless telephone equipment on aesthetic grounds preempted by Public Utilities Code section 7901, which grants telephone companies a franchise to place their equipment in the public right of way provided they do not “incommode the public use of the road or highway or interrupt the navigation of the waters”? (2) Is such an ordinance, which applies only to wireless equipment and not to the equipment of other utilities, prohibited by Public Utilities Code section 7901.1, which permits municipalities to “exercise reasonable control as to the time, place and manner in which roads, highways, and waterways are accessed” but requires that such control “be applied to all entities in an equivalent manner”?

#16-446 *People v. Martinez*, S238365. (F070993; nonpublished opinion; Tulare County Superior Court; VCF296455.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

#16-447 *People v. Nguyen*, S238410. (G051524; nonpublished opinion; Orange County Superior Court; 11WF1672.) Petition for review after the Court of Appeal affirmed an order denying a petition to recall sentence.

The court ordered briefing in *Martinez* and *Nguyen* deferred pending decision in *People v. Romanowski*, S231405 (#16-24), which present the following issue: Does Proposition 47 (“the Safe Neighborhoods and Schools Act”), which reclassifies as a misdemeanor

any grand theft involving property valued at \$950 or less (Pen. Code, § 490.2), apply to theft of access card information in violation of Penal Code section 484e, subdivision (d)?

#16-448 *People v. Velasquez*, S238423. (B264142; nonpublished opinion; Los Angeles County Superior Court; BA405723.) Petition for review after the Court of Appeal affirmed an order granting in part and denying a petition to recall sentence. The court ordered briefing deferred pending decision in *People v. Valenzuela*, S232900 (#16-97), which presents the following issue: Is a defendant eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction after the superior court has reclassified the underlying felony as a misdemeanor under the provisions of Proposition 47?

STATUS

#15-08 *Dynamex Operations West, Inc. v. Superior Court*, S222732. The court requested the parties to file supplemental briefs addressing the following question: In resolving the issue in this case, what relevance, if any, should the court give to the Division of Labor Standards Enforcement (DLSE) Enforcement Policies and Interpretations Manual (2002 update as revised March 2006, available at www.dir.ca.gov/dlse/DLSE_EnfcManual2012.pdf) and, in particular, to the sections of the manual that discuss the independent contractor/employee distinction (§§ 2.2, 2.2.1, 28-28.4.2.4)?

#15-232 *Facebook, Inc. v. Superior Court*, S230051. The court ordered the parties to file supplemental briefs addressing the following question: Should 18 United States Code section 2702(a)(1) and (2), part of the Stored Communications Act (SCA), be construed — in light of (i) the statutory language; (ii) other language in the Electronic Communications Privacy Act of 1986, of which the SCA is a part; (iii) the legislative history of the Acts as reflected in reports by the respective congressional judiciary committees; and (iv) case law construing section 2702(a)(1) and (2) in light of the language and legislative history of the Acts — to apply to only those communications that were, when sent, configured to be private — e.g., restricted to “followers” or “friends” — and not to communications that were, when sent, configured to be public, and hence generally accessible to the public? (See, e.g., 18 U.S.C. § 2511(a)(g)(i); House of Representatives Com. on Jud. Rep. No. 99-647 (June 19, 1986); Senate Com. on Jud. Rep. No. 99-541 (Oct. 17, 1986); *Konop v. Hawaiian Airlines, Inc.* (9th Cir. 2002) 302 F.3d 868; *Snow v. Direct TV, Inc.* (11th Cir. 2006) 450 F.3d 1314; *Viacom Int’l Inc. v. YouTube Inc.* (S.D.N.Y. 2008) 253 F.R.D. 256; *Crispin v. Christian Audigier* (C.D. Cal. 2010) 717 F.Supp.2d 965; *Ehling v. Monmouth-Ocean Hospital Service Corp.* (D.N.J. 2013) 961 F.Supp.2d 659; cf. *People v. Harris* (Crim. Ct. N.Y. 2012) 949 N.Y.S.2d 590.)

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The Supreme Court of California is the state's highest court and its decisions are binding on all other California state courts. The court's primary role is to decide matters of statewide importance and to maintain uniformity in the law throughout California by reviewing matters from the six districts of the California Courts of Appeal and the fifty-eight county superior courts (the trial courts). Among its other duties, the court also decides all capital appeals and related matters and reviews both attorney and judicial disciplinary matters.